

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION**

ANTHONY J. ZANGHI, KENNETH J.
SOWERS, DOMINIC MCCUCH, JAMES
HOHMAN, DARRELL SHETLER *on behalf
of themselves and others similarly situated, and*
UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO/CLC,

Plaintiffs,

v.

FREIGHTCAR AMERICA, INC.,
JOHNSTOWN AMERICA CORPORATION,
and JOHNSTOWN AMERICA
CORPORATION USWA HEALTH &
WELFARE PLAN

Defendants.

No.: 3:13-CV-00146

Hon. Kim R. Gibson

Electronically filed

**DEFENDANTS' MOTION FOR RECONSIDERATION SEEKING TRANSFER TO THE
PITTSBURGH DIVISION**

Defendant FreightCar America, Inc., (“FreightCar”) hereby moves this Court to reconsider its Memorandum and Order of Court denying FreightCar’s Motion to Dismiss, Transfer, or Stay Proceedings and transfer this litigation to the Pittsburgh Division of the Western District of Pennsylvania.

When read as a whole and in its proper context, the 2005 settlement agreement provides that in the event that the plaintiffs re-filed their lawsuits against FreightCar, they were required to do so in the same court where the those lawsuits were originally filed and settled—the Pittsburgh

Division of this district. Furthermore, transfer to Pittsburgh is in the interest of judicial economy because Magistrate Judge Mitchell, who had primary responsibility for the previous litigation, is intimately familiar with the claims, parties, and evidence in this case and could expeditiously resolve the parties' dispute.

WHEREFORE, defendant FreightCar America, Inc. respectfully requests that this Court reconsider its order denying FreightCar's Motion to Dismiss, Transfer, or Stay Proceedings and transfer this case to Pittsburgh.

Dated: January 21, 2014

Respectfully Submitted,

/s/ Sam P. Myler

James Clark Munro II

Michael J. Parrish, Jr.

Ronald P. Carnevali, Jr.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

AmeriServ Financial Building, P.O. Box 280

Johnstown, Pennsylvania 15907

T: (814) 536-0735

F: (814) 539-1423

Nancy G. Ross (*pro hac vice*)

Sam P. Myler (*pro hac vice*)

Kirk Watkins (*pro hac vice*)

MCDERMOTT WILL & EMERY LLP

227 West Monroe Street

Chicago, Illinois 60606

T: (312) 372-2000

F: (312) 984-7700

**ATTORNEYS FOR DEFENDANTS FREIGHTCAR
AMERICA, INC., JOHNSTOWN AMERICA, LLC,
AND JOHNSTOWN AMERICA CORPORATION
USWA HEALTH & WELFARE PLAN**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system this 21st day of January, 2014. Any other counsel of record will be served by facsimile transmission and/or first class mail.

/s/ Sam P. Myler

Sam P. Myler